

Board of County Commissioners - Staff Report

Meeting Date: September 11, 2018 Submitting Dept: County Attorney **Presenter:** Erin E. Weisman, Deputy County Attorney **Subject:** MOU among JHMR, Teton County Board of County Commissioners and TCSD #1 Board of Trustees

Statement / Purpose: To consider and discuss a proposed draft tripartite Memorandum of Understanding (MOU) among Jackson Hole Mountain Resort Corporation (JHMR), Teton County Board of County Commissioners and Teton county School District No. 1 Board of Trustees regarding the mutual desire of these parties to potentially use and transfer the 8.5 acres known as Stilson Park Subdivision currently owned by Teton County to TCSD #1 to be used for a school site/purpose in exchange for the recently transferred 3.0 acre parcel in Teton Village which the TCSD #1 would then convey back to Teton County.

<u>Background / Description</u>: On June 19, 2018, the Board of County Commissioners (Board) approved the transfer of a 3.0 acre portion of the exaction parcel at Teton Village Park to Teton County School District # 1, which was recorded thereafter. Teton County owns an 8.5 acre park parcel in the Stilson Park Subdivision.

On August 23, 2018, after receiving direction from the Board, the County Attorney's Office, Planning staff, and the Board's Administrator met with representatives from the JHMR and TCSD #1. The discussion focused on mechanisms to expedite the transfer of the Stilson Park Subdivision parcel to TCSD #1 from Teton County in exchange for the Teton Village Park 3.0 acre parcel being conveyed back to Teton County from TCSD #1. Planning staff has suggested that a re-zone of the Stilson parcel would be one avenue to allow for an expedient transfer of the Stilson parcel to TCSD #1 without having to revisit the Stilson Master Plan. A re-zone of the Stilson parcel from Park to P-SP would allow TCSD #1 the opportunity to fully consider the Stilson parcel site as a school site, as an alternative to constructing a school at the Teton Village Park parcel. In the short-term Teton County would pursue a re-zone of the Stilson parcel from Park to P-SP zone. The MOU details the parties' mutual understanding and tasks to achieve the common goal of pursuing a re-zone and parcel exchange of the Stilson parcel with Teton Village Park for a potential future school site at the Stilson parcel.

<u>Stakeholder Analysis & Involvement:</u> BCC Administrator, Planning Department, JHMR, TCSD #1, and the County Attorney's Office. The attorneys for all parties are working together to finalize the MOU, which remains in draft form at the time of issuance of this staff report.

Fiscal Impact: N/A at this time.

Staff Impact: Ongoing.

Legal Review: Weisman.

<u>Staff Input/Recommendation:</u> Modifications are needed to the current proposed draft MOU prior to approval by the Board of County Commissioners.

Attachments:

1. DRAFT Memorandum of Understanding among Jackson Hole Mountain Resort Corporation, Teton County Board of County Commissioners and Teton county School District No. 1 Board of Trustees (original draft provided by Chris Hawks, attorney for JHMR, comments and edits are from Sara Van Genderen, attorney for TCSD #1, and County Attorney's Office, with reservation of the right and ability to make additional revisions to the draft MOU).



Board of County Commissioners - Staff Report

- 2. Warranty Deed Teton Village Park Parcel
- 3. Special Warranty Deed Stilson Park Subdivision Parcel

Suggested Motion:

I move to direct the County Attorney's Office to make the following modifications to the Memorandum of Understanding as discussed today which are: (LIST)

and bring a final draft to the Board on (INSERT DATE) for consideration, review, and approval of the Memorandum of Understanding among Jackson Hole Mountain Resort Corporation, Teton County Board of County Commissioners and Teton County School District No. 1 Board of Trustees regarding Stilson Park Subdivision Parcel.

MEMORANDUM OF UNDERSTANDING AMONG JACKSON HOLE MOUNTAIN RESORT CORPORATION, TETON COUNTY BOARD OF COUNTY COMMISSIONERS AND

TETON COUNTY SCHOOL DISTRICT NO. 1 BOARD OF TRUSTEES

This MEMORANDUM OF UNDERSTANDING (the "MOU") is made and entered into this _____ day of September, 2018 (the "Effective Date") by and among the Jackson Hole Mountain Resort Corporation, a Wyoming corporation ("JHMR"), the Board of Commissioners of Teton County, a duly organized county, State of Wyoming ("Teton County") and the Board of Trustees of Teton County School District No. 1, State of Wyoming, a duly organized school district (the "School District" and, together with JHMR and Teton County, the "Parties").

RECITALS

WHEREAS, JHMR owns Lot 1 and Lot 3 of the Stilson Park Subdivision according to the that plat recorded on September 11, 1997 in the Office of the Teton County Clerk, Teton County, Wyoming, as Plat No. 911 (the "JHMR Property"); and

WHEREAS, Teton County owns Lot 2 of the Stilson Park Subdivision according to the that plat recorded on September 11, 1997 in the Office of the Teton County Clerk, Teton County, Wyoming, <u>document no. or book and page INSERT</u>, as Plat No. 911 (the "County Property"); and

WHEREAS, School District owns the approximately three acre parcel of land located in Teton Village, Wyoming, and legally described on Exhibit A hereto (the "District Parcel") and

WHEREAS, JHMR, Teton County and the School District desire to enter into this MOU for the purposes of documenting their intention to work collaboratively together to facilitate the real property transactions and other agreements described more fully herein which are in the best interests of the public and of the Parties to this MOU; and

NOW THEREFORE, in exchange for Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

AGREEMENT:

1. <u>Memorandum of Understanding.</u> The purpose of this MOU is to create a working understanding and agreement <u>among</u> JHMR, Teton County and the School District regarding the School District's desire to exchange the District Parcel for the County Parcel such that a new Teton County School <u>may</u> be constructed on the County Parcel in the Stilson Park Subdivision (the 'Exchange'). Additionally, the parties wish to create a

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working understanding of (i) how the District Parcel will be used by the County if it is acquired in the Exchange, and (ii) how Lots 1 and 3 of the Stilson Park Subdivision will be used and developed in connection with JHMR parking, and potential future uses such as daycare, employee housing, retail, transit center and playing fields.

2. Term of MOU.

This MOU shall commence upon the Effective Date above and shall remain in full force and effect until terminated by the <u>Parties or at such time as the Parties' responsibilities are complete</u>, whichever is earlier. Any Party may terminate this MOU with or without cause by providing written notice to the other <u>Parties</u>.

3. <u>Understanding, Agreement and Responsibilities of the Parties:</u>

- A. Upon execution of this MOU, Teton County shall <u>start the process</u> for an application to rezone the County Parcel from Park to P/SP as soon as reasonably practicable. If the County Parcel is re-zoned to P/SP by December 31, 2018 <u>and</u> the School District determines through their collaborative planning process by June 30, 2019 that the County Parcel is the appropriate location for a new school, the School District shall commit to convey the District Parcel <u>back</u> to Teton County and Teton County shall commit to convey the County Parcel to the School District. The P/SP zoning on the County Parcel shall not become effective until Teton County actually conveys the County Parcel to the School District.
- B. Once the County Parcel is rezoned to P/SP and conveyed to the School District, it may only be used for school purposes, including, but not limited to, a school building(s), playing fields, ancillary school support facilities or uses, parking for school personnel, and/or housing for School District employees, or to acquire additional or other property for a school site by sale or trade (SVG) (collectively "School Purposes"). The School Purposes restrictions shall be imposed on the County Parcel by restrictive covenant enforceable by JHMR, Teton County, and/or the successor owner of Lot 1 and Lot 3 of the Stilson Park Subdivision.
- C. The Exchange is contingent on (i) JHMR releasing the covenant restriction restricting the use of the County Parcel to unlighted playing fields (the "JHMR Restriction"), the County having marketable title to the County Parcel, the School District having marketable title to the District Parcel, (ii) the County approving a new master plan for Lot 1 and Lot 3 of the Stilson Park Subdivision, and (iii) such other terms and conditions as are reasonably customary for a transaction of this type in Teton County, Wyoming.
- D. JHMR agrees to release the JHMR Restriction when (i) the County Parcel has been re-zoned to P/SP and the County is prepared to convey the County Parcel to the School District, (ii) the School District is prepared to convey the District Parcel back to Teton County, (iii) JHMR and Teton County have agreed to the approved uses for the District Parcel, and (iv) Teton County has approved a new master plan for Lot 1 and Lot 3 of the Stilson Park Subdivision.
- E. The collaborative process and agreements set forth herein shall not be construed as a conditional use permit, nor shall it be construed as granting Teton County

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Commented [A4]: Not sure we can do this, need to discuss with Planning? I understand the goal, just not sure this is the right language to address it.

Commented [A5]: Duplicative, covered in 3.F.?

Commented [A6]: Or delete specifics and just state school purposes

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TCSD should not be limited in any way to its potential use of the property so long as it is used for a school related purpose.

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Commented [A10]: This would come at a later date and would take longer, not sure it should be called out here or in the MOU at all

Commented [A11R10]: Agreed. I understood our intent is to avoid having to adopt a new master plan prior to the exchange. (SVG)

Commented [A12]: Define? Isn't this the "Maintenance Agreement?" Released by JHMR and also approved and in accord with Teton County

Commented [A13]: Why would this be included? It would have restrictive covenant, deed restriction it has now and in compliance with Master Plan – "public purpose."

Commented [A14]: Again, removal of this language?

Commented [A15R14]: Agreed. Subsections iii and iv should be removed. (SVG)

MEMORANDUM OF UNDERSTANDING

or JHMR any final approval authority over school site selection, <u>design or use (SVG)</u>. Additionally, all commitments and conveyances described herein are contingent on legal review by all <u>Parties</u> and on all <u>Parties</u> hereto reviewing and approving final conveyance, release and other agreements necessary to facilitate the <u>Exchange</u>.

F. The Exchange shall occur in a simultaneous transaction where warranty deeds for the District Parcel and County Parcel are recorded in the Teton County Clerk's office, the release of the JHMR Restriction is recorded in the Teton County Clerk's office, and the final P-SP zoning permit is issued for the County Parcel, none of which will occur until [Teton County and JHMR agreed to approved uses for the District Parcel (which shall be confirmed by recorded covenant enforceable by JHMR) and Teton County has approved a new master plan for Lot 1 and Lot 3 of the Stilson Park [Subdivision].

4. Notices

All notices arising out of, or from, the provisions of this MOU shall be in writing and given to the parties at the address provided under this MOU, either by regular mail, certified mail when required for termination, or delivery in person.

Jackson Hole Mountain Resort Mary Kate Buckley, President P.O. Box 290 3395 Cody Lane Teton Village, WY 83025

With a copy to:

Christopher Hawks, P.C. Hawks & Associates LC P.O. Box 4430 199 East Pearl Ave. Suite 103 Jackson, WY 83001

TETON COUNTY BOARD OF COMMISSIONERS Attn: County Administrator 200 S. Willow Street Jackson, WY 83001

TETON COUNTY SCHOOL DISTRICT NO. 1 Attn: Assistant Superintendent P.O. Box 568 Jackson, WY 83001

5. General Provisions.

MEMORANDUM OF UNDERSTANDING

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Commented [A16]: Need to check with Planning on how to coordinate, this may work as it's vague

Commented [A17]: Cannot bind future boards. Not sure why JHMR gets to weigh in on District Parcel. Remove.

Commented [A18]: Again, the intent is to avoid the master planning process.

- A. <u>Amendments</u>. Any changes, modifications, revisions, or amendments to this MOU which are mutually agreed upon by the parties shall be incorporated by written instrument, executed and signed by all parties of this MOU. No verbal amendments are permitted.
- B. <u>Applicable Law</u>. The laws of the State of Wyoming shall govern the construction, interpretation and enforcement of this MOU. The courts of the State of Wyoming shall have jurisdiction over any action arising out of the MOU, and over the parties, and the venue shall be the Ninth Judicial District, Teton County, Wyoming.
- C. <u>Entirety of Agreement</u>. This MOU represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral. Where any portion of this MOU is in conflict with state statute, state statute shall govern.
- D. <u>Severability</u>. Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may re-negotiate the terms affected by the severance.
- E. <u>Governmental Immunity</u>. Teton County and the School District do not <u>waive their governmental immunity</u> by entering into this MOU, and all Parties fully retain all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- F. <u>Indemnification.</u> Each party shall assume the risk of any liability arising from its own actions or omissions or the actions or omissions of its employees, volunteers, and agents at all times. Neither party agrees to insure, defend, or indemnify the other, subject to negligence or willful misconduct.

6. Signatures.

In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set forth below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

NOW THEREFORE, IT IS MUTUALLY AGREED TO AND UNDERSTOOD BY AND BETWEEN THE PARTIES THAT:

This MOU is not a legally binding or enforceable document, and does not create any legal, financial, funding or other fiscal or fiduciary duties or obligations of any kind between the participants or to any third-parties and may not be relied upon by any party as the basis for any claim. The MOU expresses the mutual understandings and agreements as outlined herein, and nothing in this MOU may be construed as affecting the legal authority of the participants.

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MEMORANDUM OF UNDERSTANDING

IN WITNESS WHEREOF, the parties hereto have date above.	e executed this MOU as of the
JACKSON HOLE MOUNTAIN RESORT CORPORATION, a Wyoming corporation,	
By: Mary Kate Buckley, President	
TETON COUNTY, WYOMING State of Wyoming	
By:	
Sherry L. Daigle, Teton County Clerk	
TETON COUNTY SCHOOL DISTRICT NO. 1, State of Wyoming	
By: Katherine L. Mead, Chair Board of Trustees	
Attest:	
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MEMORANDUM OF UNDERSTANDING

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SPECIAL WARRANTY DEED

JHSC PROPERTIES, INC., a Wyoming corporation, of P.O. Box 290, Teton Village, WY 83025 ("Grantor"), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby CONVEYS AND WARRANTS, as specially provided hereinafter to TETON COUNTY, WYOMING ("Grantee") of P.O. Box 1727, Jackson, Wyoming 83001, all of Grantor's right, title and interest in and to that tract of land situated in Teton County, Wyoming, to wit:

See Exhibit A attached hereto and by this reference specifically incorporated herein.

Together with all hereditaments, improvements, privileges and appurtenances thereof and thereunto belonging, but subject to taxes, assessments, reservations, restrictions, encroachments, covenants, conditions, rights-of-way and easements of sight and record.

Grantor shall and will specially warrant that title to the aforesaid property is free from defects and encumbrances created or suffered by Grantor, and will forever defend the property conveyed by the within deed, and every part thereof, against every person lawfully claiming the same, or any part thereof, by, through, or under Grantor, and no other.

WITNESS the hand of Grantor this 11th day of September, 1997.

JHSC Properties, Inc., a Wyoming corporation

RELEASED INDEXED ABSTRACTED SCANNED

By: Jerry Blann Its: President

STATE	OF	WYOMING)
			\

)) SS.

COUNTY OF TETON

Grantor: JHSC PROPERTIES INC Grantee: TETON COUNTY WYOMING Doc 0447982 bk 340 pg 278-271 Filed at 09:06 on 09/12/97 V Jolynn Coonce, Teton County Clerk fees: 0.00

Ry JULIE HODGES Deputy

The foregoing Special Warranty Deed was acknowledged before me by Jerry Blann, President of JHSC Properties, Inc. this // day of September, 1997.

Witness my hand and official seal

My commission expires:

Notary Public
Pamela Ree Waitz - NOTARY PUBLIC
County of State of

Teton Wyomir My Commission Expires 5//201

JACKSON:0012447.02

LEGAL DESCRIPTION OF LOT 2 OF STILSON PARK SUBDIVISION

All of Lot 2 as shown on the Final Plat of Stilson Park Subdivision recorded in the Office of the Clerk of Teton County, Wyoming as plat number <u>(1)</u>

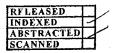
SUBJECT TO and TOGETHER WITH any easements, rights-of-way, covenants, conditions, restrictions, agreements, reservations or encumbrances of sight and/or record.

Said property CONTAINS 8.5 acres more or less.

Pierson Land Surveys, PC July 28, 1997

EXHIBIT A

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CORRECTIVE WARRANTY DEED

THIS CORRECTIVE WARRANTY DEED is intended to and shall replace and supersede that certain Warranty Deed, recorded on June 19, 2018 as Doc 0951105, in the land records of the Teton County Clerk, Teton County, Wyoming (the "Warranty Deed"), by and between the same parties herein, for the sole purpose of correcting the real property description which was attached as Exhibit A to the Warranty Deed and incorporated by reference therein. A revised legal description is attached to this Corrective Warranty Deed as Exhibit A and is incorporated by reference herein.

The Board of Commissioners of the County of Teton, a duly organized County, State of Wyoming ("Grantor"), for and in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, in hand paid, the receipt and sufficiency of which is hereby acknowledged, hereby CONVEYS and WARRANTS to the Teton County School District No. 1, a duly organized school district, State of Wyoming ("Grantee"), whose address is P.O. Box 568, Jackson, Wyoming 83001, the following described real property, situate in the County of Teton, State of Wyoming, hereby waiving and releasing all rights under and by virtue of the homestead exemption laws of the State of Wyoming, to-wit:

See Exhibit A attached hereto and by this reference incorporated herein.

PIN:

Including and together with all and singular the tenements, hereditaments, appurtenances and improvements thereon or thereunto belonging, but subject to taxes, reservations, covenants, conditions, restrictions, rights-of-way, and easements of sight or record.

This conveyance of the real property fulfills and satisfies one of the development exaction requirements set forth in Exhibit 13-1 of Section 13 of the Teton Village Expansion (Area Two) Resort Master Plan for a Village Park for a 3.0-acre School Site.

It is thus hereby understood and stipulated that the above-described real property hereby conveyed may only be used for school purposes, including, but not limited to, a school building, playing fields, ancillary school support uses, or to acquire additional or other property for a school site by sale or trade with Teton County or another government entity. It is further understood and stipulated that the real property shall remain subject to a reverter in perpetuity which runs with the real property identified in Warranty Deed on PIN: 22-42-16-19-3-00-009 as set forth in Doc 0945558 and shall be valid and enforceable on this Grantee or its successors and assigns. Until such time that the Real Property is used for the above described school purposes, it is further understood and stipulated that the above described real property may be used for a public park, playground and/or other public purpose facilities that are in each case consistent with Section 13 of the Teton Village Expansion (Area Two) Resort Master Plan as existing on the date of this Warranty Deed upon written agreement and authorization by the Grantee.

GRANTOR: BOARD OF COMMISSIONS OF THE COUNTYGRANTEE: TETON COUNTY SCHOOL DISTRICT NO. 1
Doc 0952101 Filed At 16:42 ON 07/03/18
Sherry L. Daigle Teton County Clerk fees: 0.00
By Mary D Antrobus Deputy

WITNESS our hands this 3 day of July, 2018
GRANTOR: Board of Commissions of the County of Teton, a duly organized County of the State of Wyoming:
By Mark Newcomb, Chair By Mar
On this 2 day of, 2018, Mark Newcomb, the duly appointed Chair for the Board of County Commissioners of the County of Teton, a duly organized County of the State of Wyoming, personally appeared before me and being personally known to me acknowledged that he executed the foregoing instrument. Witness my hand and official seal. Shelley D. Fairbanks - Notary Public
County of Uncoin State of Wyoming My Commission Expires 10/25/2019 My Commission Expires 10/25/2019 My Commission Expires 10/25/2019
STATE OF WYOMING) ss. COUNTY OF TETON On this 3 day of
GRANTEE: TETON COUNTY SCHOOL DISTRICT NO. 1 By: Katherure L. Mead
Its: Cleirus STATE OF WYOMING) Ss. COUNTY OF TETON)
Witness my hand and official seal. Shelley D. Fairbanks · Notary Public County of Uncoln My Cornanission Express: 12121219 On this 2 day of 2 2018, Katherine L. Mead, the duly appointed Chair for the Board of Trustees of Teton County School District No. 1, personally appeared before me and being personally known to me acknowledged that they executed he/she executed the foregoing instrument.

EXHIBIT A LEGAL DESCRIPTION OF A PORTION OF VILLAGE PARK

TO WIT:

A PARCEL OF LAND LOCATED WITHIN Government Lot 3 of Section 19, T.42N., R.116W., 6th P.M., Teton County, Wyoming;

said PARCEL is A PORTION of VILLAGE PARK, described in Doc 0945558 and shown on that Map Of Survey Of The Village Park, Tract Map T-413D, in the Office of the Clerk of Teton County, Wyoming, itself being a portion of the Four Shadows LLC Tract described in that Warranty Deed of record in Book 701 of Photo, pages 1096-1106 in said office; Shooting Star West, a subdivision of record in said Office as Plat 1376, having been EXCEPTED from said Tract;

said PARCEL is more particularly described as follows:

BEGINNING at the intersection of the southerly boundary of Teton County Road No. 22-6A (identical with a portion of the easement for Après Vous Road, which is described in that instrument of record in said Office in Book 841 of Photo, pages 300-311) with the east boundary of The Homesteads at Teton Village, a subdivision of record in said Office as Plat 1323, said intersection is monumented by a 5/8 inch diameter steel reinforcing bar with 2 inch diameter aluminum cap inscribed "JORGENSEN ASSOCIATES PLS 8469";

thence on said southerly boundary of Après Vous Road easement as follows:

proceeding easterly 54.44 feet on the arc of a curve to the right having a radius of 220.00 feet through a central angle of 14°10'40" to a 5/8 inch diameter steel reinforcing bar with 2 inch diameter aluminum cap inscribed "JORGENSEN ASSOCIATES PLS 8469"; the chord of said curve bears S75°46'22"E, 54.30 feet; the radius point of said curve bears S07°08'18"W from said Point of Beginning;

thence S68°41'02"E, 308.11 feet a 5/8 inch diameter steel reinforcing bar with 2 inch diameter aluminum cap inscribed "JORGENSEN ASSOCIATES PLS 8469";

thence southeasterly 133.02 feet on the arc of a curve to the right having a radius of 470.00 feet through a central angle of 16°12'59"; the chord of said curve bears S60°34'32"E, 132.58 feet to the intersection with the northerly prolongation of the northwesterly boundary of that Amendment And Complete Restatement Of Conservation Easement recorded in Book 818 of Photo, Pages 573-620 in said office;

thence departing said southerly boundary and proceeding on said northwesterly boundary and the prolongation thereof S39°08'18"W, 328.53 feet;

thence N68°41'02"W, 305.84 feet to said easterly boundary of The Homesteads at Teton Village;

thence on said easterly boundary N11°28′08″E, 136.79 feet to a 5/8 inch diameter steel reinforcing bar with 2 inch diameter aluminum cap inscribed "JORGENSEN ASSOCIATES PLS 8469";

thence continuing on said easterly boundary N02°50'45"E, 200.31 feet to the **POINT OF BEGINNING**.

said PARCEL ENCOMPASSES AN AREA OF 3.00 ACRES, more or less;

the BASIS OF BEARING for this description is S68°41'02"E on the tangent of said southerly boundary of Après Vous Road.

EXHIBIT A
LEGAL DESCRIPTION OF THE
VILLAGE PARK
Page 1 of 2

This description is based on surveys performed in the years of 2008 through 2012, in June and July of 2013, and in May of 2014;

the purpose of this description is to define the boundary of said Parcel; this description provides no information on any easements, rights-of-way, agreements, covenants, conditions, restrictions, or encumbrances of sight and / or record to which said Parcel may be subject, or which may benefit said Parcel.

JORGENSEN ASSOCIATES, P.C.
Prepared May 4, 2018 REVISED May 29, 2018
P:\0017\17103 - TCSD-Four Shadows\60-Survey\Docs\17103 2018-05-04 TCSD 3gc Parcel Legal Desc.docx

EXHIBIT A LEGAL DESCRIPTION OF THE VILLAGE PARK Page 2 of 2